

REMARKS

By the above actions, the specification, abstract and claims 11-15, 18, 19, 22-24, 26, 33, 35, 37, 38, 40 and 41 have been amended. In view of the actions taken and the following remarks, reconsideration of this application is requested.

With regard to the objections raised by the Examiner, all of the changes proposed by the Examiner have been implemented except for those which were obviated by the change in dependency of claims 13-15 and 33. Therefore, all of the outstanding objections should now be withdrawn and such action is now requested.

Claims 11-16 and 18-41 have been rejected for indefiniteness under § 112. Each of the areas of indefiniteness noted by the Examiner has been addressed by the above, so that it is submitted that the claims are now all clear and definite. Accordingly, withdrawal of this rejection is requested.

Claims 11-16, 18-26, 34, and 38, were rejected, as best understood, based upon the Hays patent. However, to the extent that this rejection relates to the claims as now presented, it should be withdrawn for the following reasons.

In particular, Hays discloses a weight portioning method and apparatus that bears no resemblance to that of the present invention. In fact, Hays discloses a method and apparatus that is the complete opposite from the present invention. That is, while the present invention, after weighing, supplies the articles into a distribution system having a plurality of batching stations and uses a selector for moving each of the articles into a selected one of the plurality of batching stations, Hays feeds articles into a plurality of weighing stations 24, 48, 70 from which selected articles are moved to a single final batch forming station 30, 54, 76 to which, optionally additional articles fed by a separate feeder system 42, 62 and separately weight at 54, 64 are also delivered. It is not seen how forming a single batch from multiple weighing stations can render obvious, let alone anticipate the present invention which forms a plurality of batches from a single stream of previously weighed articles. As a result, the rejection under § 102 based upon the Hays patent should be withdrawn and such action is hereby requested.

Claims 27, 28, 35-37 and 39-41 have been rejected, as best understood, as being unpatentable under 35 USC § 103 based upon the Hays patent when viewed in combination with the Dalgaard UK patent application publication. This rejection not only suffers from the

difficiencies of the Hays patent relative to the present invention noted above, but Dalgaard is so fundamentally different in structure and concept from the method and apparatus of the Hays patent that no one, no matter how skilled in the art, would ever consider to combine their teachings.

The Dalgaard patent application publication, as noted in applicant's previous response, teaches a modified accumulation method in which articles outside of an acceptable variation from an average weight are used as the first article in each bin and then the remainder of the bin is filled based upon the number of articles of average weight needed to reach the target weight, instead of using the probability method of the present application which selects which batch to send each article to based on the probability of that article best contributing to achieving the target weight without performing any probability calculations.

The Examiner has made no attempt to explain how one could possibly apply Dalgaard's concepts relating to a single stream of weighed products which are sorted into multiple batches to the Hays who delivers unweighed products to a plurality of weighing stations. Furthermore, there is no explanation of how Hays' statistical concepts, which do not apply to sending a single stream of weighed products to multiple batching stations at which no weighing is to take place, could be adapted to the fundamentally different method and apparatus disclosed by Dalgaard. Furthermore, it is not seen how any combination of these two references, neither of which is comparable to the present invention, could render the present invention obvious. For example, it is not seen how Hays' statistical concepts could be employed with also using his multiple scale implementation so any multiple batching implementation based on Dalgaard would have to retain this feature, and as such, would be distinguishable from the present invention. Therefore, withdrawal of the § 103 rejection based on the combination of the Hays and Dalgaard references is in order and is hereby requested.

Claim 29 has been rejected, as best understood, as being unpatentable under 35 USC § 103 based upon the Hays patent when viewed in combination with the Hawkins et al. patent. However, Hawkins et al. merely discloses a classifying apparatus for particulate material with no batching being involved. Besides the fact that there is no suggestion that the classifying as taught by Hawkins et al. for particulate material using air blasts would be suitable for use in classifying the fruits and vegetables batched by Hays, even if the food items batched by Hays

were to be sorted by type, such would not eliminate the basic differences between the present invention and the disclosure of the Hays patent which are noted above as making it incapable of teaching the present invention nor would it how the sorted items could be contemporaneously batched using Hays' statistical concepts and apparatus that is not designed to separately batch two different types of products out of a stream of products. Thus, this rejection should also be withdrawn and action to that effect is now requested.

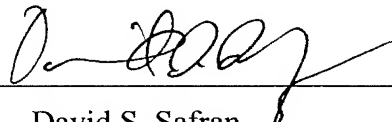
Claims 30-33 have been rejected, as best understood, as being unpatentable under 35 USC § 103 based upon the Hays patent when viewed in combination with the Haze et al. patent. Here again, it is not seen how the method and apparatus using "combinational counting and weighing method" of the Haze et al. patent could be combined with one using the fundamentally different statistical concepts of Hays, let alone so as to result in the present invention. The mere fact that some techniques exist which enable different types of articles to be contemporaneously allocated into batches having at least two types of articles in each batch, does not mean that such can be done using the concepts that are central to the Hays patent, or that any modification which would enable Hays to form such batches would be suggestive of the present invention given the fundamentally different nature of present invention relative to the method and apparatus of Hays which relies of use of multiple weighing stations to form an individual batch instead of forming multiple batches from a stream of previously weighed products. Thus, the Examiner has not met his burden of establishing a prima facie case of obviousness so that withdrawal of this rejection is in order and is now requested.

The references that have been cited but not applied by the Examiner have been taken into consideration. However, since these references were not found to be relevant enough by the Examiner to apply against the claims as previously presented, no detailed comments thereon are believed to be warranted at this time.

Should this application be in condition for allowance but for the presence of nonelected claims or any other issues which could be addressed through discussions with the undersigned, then the Examiner is requested to contact the undersigned by telephone so that the further progress of this application might thereby be expedited. Furthermore, should the only obstacle to passage of this case for issuance as a patent be the presence of non-elected

claims, then the non-elected claims may be cancelled by Examiner's Amendment subject to applicant's right to file a divisional application with respect thereto.

Respectfully submitted,

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